



MULTISTATE TAX COMMISSION

Working together since 1967 to preserve federalism and tax fairness

To:	Sales and Use Tax Uniformity Subcommittee
From:	Roxanne Bland, MTC Counsel
Date:	July 14, 2011
Subject:	Accommodations Intermediaries – Single Remittance

At its March, 2011 meeting, the subcommittee directed the drafting team to develop a single remittance model for accommodations intermediaries. The first attachment (Attachment A) is the draft model, with a single remittance system substituting for the dual remittance system as the only change. The second attachment (Attachment B) is a list of policy questions developed by the drafting team concerning potential changes to the single remittance model. The third attachment (Attachment C) is an example the drafting team developed so that the subcommittee can see what a revised single remittance model might look like. The fourth attachment (Attachment D) is the dual remittance model and is provided for comparison purposes.

Attachment A

**MODEL STATUTE ON THE TAX COLLECTION PROCEDURES FOR
ACCOMMODATIONS INTERMEDIARIES**

Single Remittance

7/14/11 Draft

Sales and Use Tax Subcommittee

For Discussion Purposes Only

1. Definitions.—

(a) “Accommodations” means one or more individual sleeping rooms or suites for transient overnight lodging.

(b) “Accommodations provider” means any person or entity that furnishes accommodations for periods of [less than thirty days ***alternative language*** thirty days or less] to the general public for compensation. The term “furnishes” includes the sale of use or possession, or the sale of the right to use or possess.

(c) “Accommodations intermediary” means any person or entity, other than an accommodations provider, that facilitates the sale of an accommodation and charges a room charge to the customer. For purposes of this definition, the term “facilitates the sale” includes brokering, coordinating, or in any other way arranging for the purchase of, or the right to use accommodations by a customer.

(d) “Accommodations fee” means the room charge less the discount room charge, if any, provided that for purposes of this Act the accommodations fee shall not be less than zero.

(e) “Room charge” means the full retail price charged to the customer for the use of the accommodations, including any accommodations fee before taxes.

(f) “Discount room charge” means the amount charged by the accommodations provider to the accommodations intermediary for furnishing accommodation.

(g) “Unrelated accommodations intermediary” means an accommodations intermediary that is not part of a controlled group of corporations, as defined in I.R.C. Section 1563(a), that includes the accommodations provider.

(h) A travel package consists of accommodations bundled with two or more separate components such as air transportation, car rental or similar items and charged to the customer for a single retail price.

2. Collection and Remittance.—

(a) An accommodations intermediary shall be responsible for the collection of tax imposed by [cite to applicable code section(s)] on the room charge and shall be required to separately state on the invoice to the customer the specific amount of taxes collected.

(b) An accommodations intermediary shall report to the accommodations provider the room charge and remit to the accommodations provider the discount room charge and the tax collected on the room charge.

(c) An accommodations provider shall collect and remit to the [state or local tax agency] the tax imposed on the room charge.

(d) The room charge that is part of a travel package may be determined by the accommodations intermediary by reasonable and verifiable standards from the accommodation intermediary's books and records that are kept in the regular course of business including, but not limited to, non-tax purposes.

3. Safe Harbor—

(a) No assessment shall be made against an accommodations intermediary on the basis of an incorrect remittance of tax on the room charge if the tax rate applied to the room charge by an accommodations intermediary in collecting and remitting such tax is identical to the rate applied to the discount room charge by the accommodations provider.

(b) No assessment shall be made against an accommodations provider on the basis of an incorrect remittance of tax on the accommodations fee by an unrelated accommodations intermediary.

Optional:

Example:

Accommodations Provider (Provider) furnishes a one night accommodation to a guest who booked the accommodations through Accommodations Intermediary (Intermediary). The Provider bills the Intermediary for a discount room charge of \$80.00. The price at which the Intermediary facilitates the sale of a one-night accommodations to the customer is \$100.00, which includes a \$20.00 accommodations fee. The 5% tax applied to the discount room charge is \$4.00 and applied to the accommodation fee is \$1.00. The total price charged to the customer, including tax, is \$105.00, which is the sum of the discount room charge, the accommodations fee and the \$5.00 tax ($\$100 \text{ room charge} + [5\% \text{ tax rate} \times \$100.00 \text{ room charge}] = \$105.00 \text{ price to customer}$).

Intermediary remits \$5.00 tax (5% tax rate x \$80.00 discount room charge + \$1.00 tax (5% tax rate x \$20.00 accommodations fee) to the Provider. Provider remits the \$5.00 tax to the [state or local tax agency].

\$80.00		Discount room charge
\$20.00		Accommodations fee
	\$100.00	Room charge
\$4.00		Tax on discount room charge remitted by intermediary to Provider = (5% x \$80.00)
\$1.00		Tax on accommodations fee remitted by intermediary to Provider = (5% x \$20.00)
	\$5.00	Total tax on room charge remitted by Provider to [state or local tax agency]
\$105.00		Price to customer including tax charged by Provider and Intermediary

Attachment B



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Policy Questions

Below are policy questions identified by the drafting team in working on the draft model. In addition, some of the questions arose from the November 2010 survey of the states in response to the model's failure to pass the Bylaw 7 survey. Though the survey concerned the dual remittance model, some of the state responses are equally applicable here.

Nexus

Three states responding to the survey expressed concern over enforcement issues due to possible lack of nexus over the accommodations intermediary. However, as a administrative process statute, the model is aimed at those states that have determined that they have nexus over the intermediaries. So, should the model contain a provision explicitly asserting nexus over accommodation intermediaries?

Definitions

1. Do the existing definitions need more clarification? For example, the term "accommodations provider" could be rewritten:

(b) "Accommodations provider" means any person or entity that owns, operates or manages ~~furnishes~~ accommodations and makes them available for sale, use or possession for periods of [less than thirty days ~~***alternative language*** thirty days or less]~~ to the general public for compensation. ~~The term "furnishes" includes the sale of use or possession, or the sale of the right to use or possess.~~

The drafting group reviewed other state statutory definitional language and recommends that several changes in the definitions (similar to the above) be made for increased clarification (see Attachment C – Example).

2. Should the model allow for states to use their existing definitions of accommodations intermediaries, accommodations providers, etc.?

Collection and Remittance

1. Should the model contain a provision that allows states to look to the customer if the tax is not paid? For example:

“Nothing in this Act shall affect the liability for a tax that a purchaser of accommodations might otherwise have under law.”

Safe Harbor

1. In a single-remittance model, are the safe harbor provisions necessary?
2. In the survey, one state cited concerns with potential problems in enforcing compliance since no assessment can be made against an intermediary or a provider for remittance of an incorrect tax. If necessary, is the safe harbor provision too broad?

No Inference

Since the onset of this project, there has been confusion over whether the model imposes a tax, which it does not. Would it be useful to include introductory language stating the purpose of the model? Such language might read:

“No inference—This Model Statute imposes no tax liability and is only intended as an addition to an existing lodging tax act. It provides guidance relating to the proper tax collection and remittance responsibilities of accommodation intermediaries.”

Attachment C

EXAMPLE

This Model Statute imposes no tax liability and is only intended as an addition to an existing lodging tax act. It provides guidance relating to the proper tax collection and remittance responsibilities of accommodations intermediaries.

MODEL STATUTE ON THE TAX COLLECTION PROCEDURES FOR ACCOMMODATIONS INTERMEDIARIES

Single Remittance

1. Definitions.—

(a) “Accommodation” means a hotel room, a motel room, a residence, a cottage or similar transient lodging facility for occupancy for [less than thirty days^{***alternative language***} thirty days or less].

(b) “Accommodations provider” means any person or entity that owns, operates or manages accommodations, and makes them available for sale, use or possession to the general public for compensation.

(c) “Accommodations intermediary” means any person or entity, other than an accommodations provider, that facilitates the sale, use or possession of an

accommodation and charges a room charge to the general public. For purposes of this definition, the term “facilitates the sale, use or possession” means brokering, coordinating, or in any other way arranging for the purchase of sale use or possession of accommodations by the general public.

(d) “Accommodations fee” means any fee, by whatever name called, charged for facilitating the sale, use or possession of an accommodation, and is a portion of the room charge.

(e) “Room charge” means the full retail price charged for the sale, use or possession of an accommodation, including any accommodations fee before taxes.

(f) “Discount room charge” means the amount charged by the accommodations provider to the accommodations intermediary for an accommodation.

(g) A “travel package” consists of an accommodation bundled with two or more separate components such as air transportation, car rental or similar items and charged for a single retail price.

2. Collection and Remittance.—

(a) An accommodations intermediary shall be responsible for the collection of tax imposed by [cite to applicable code section(s)] on the room charge and shall be

required to separately state on the invoice to the purchaser of the accommodation the specific amount of taxes collected.

(b) An accommodations intermediary shall report to the accommodations provider the room charge and remit to the accommodations provider the discount room charge and the tax collected on the room charge.

(c) An accommodations provider shall collect and remit to the [state or local tax agency] the tax imposed on the room charge.

(d) A room charge that is part of a travel package may be determined by the accommodations intermediary by reasonable and verifiable standards from the accommodation intermediary's books and records that are kept in the regular course of business including, but not limited to, records kept for non-tax purposes.

3. Tax Liability of Purchaser.—

Nothing in this Act shall affect the liability for a tax that a purchaser of accommodations might otherwise have under law.

Optional:

Example:

Accommodations Provider (Provider) furnishes a one night accommodation to a guest who booked the accommodation through an Accommodations Intermediary (Intermediary). The room charge is \$100.00, which includes a \$20.00 accommodations fee. The Provider bills the Intermediary for a discount room charge of \$80.00 after the guest's stay is completed. The 5% tax applied to the discount room charge is \$4.00 and as applied to the accommodation fee is \$1.00. The total price charged to the guest, including tax, is \$105.00, which is the sum of the discount room charge, the accommodations fee and the \$5.00 tax (\$100 room charge + [5% tax rate x \$100.00 room charge] = \$105.00 price to guest).

Intermediary remits \$5.00 tax (5% tax rate x \$80.00 discount room charge + \$1.00 tax (5% tax rate x \$20.00 accommodations fee) to the Provider. Provider remits the \$5.00 tax to the [state or local tax agency].

\$80.00		Discount room charge
\$20.00		Accommodations fee
	\$100.00	Room charge
\$4.00		Tax on discount room charge remitted by intermediary to provider, and by provider to [state or local government] = (5% x \$80.00)
\$1.00		Tax on accommodations fee remitted by intermediary to provider = (5% x \$20.00)
	\$5.00	Total tax on room charge
\$105.00		Price to guest including tax charged by Provider and Intermediary

Attachment D

MODEL STATUTE ON THE TAX COLLECTION RESPONSIBILITIES OF ACCOMMODATIONS INTERMEDIARIES

Dual Remittance

Draft 7/14/11—MTC Sales and Use Tax Subcommittee For Discussion Purposes Only

1. Definitions.—

(a) “Accommodations” means a hotel room, a motel room, a residence, a cottage or similar lodging facility, for occupancy for [less than thirty days ^{***alternative language***} thirty days or less].

(b) “Accommodations provider” means any person or entity that owns, operates or manages accommodations, and makes them available for sale, use or possession, to the general public for compensation for periods of [less than thirty days ^{***alternative language***} thirty days or less].

(c) “Accommodations intermediary” means any person or entity, other than an accommodations provider, that facilitates the sale of an accommodation and charges a room charge to the customer. For purposes of this definition, the term “facilitates the

sale” means brokering, coordinating, or in any other way arranging for the sale, use or possession of accommodations by a customer.

(d) “Accommodations fee” means any fee, by whatever name called, charged to the customer for facilitating the sale, use or possession of an accommodation, and is a portion of the room charge.

(e) “Room charge” means the full retail price charged to the customer for the sale, use or possession of the accommodations, including any accommodations fee before taxes.

(f) “Discount room charge” means the amount charged by the accommodations provider to the accommodations intermediary for an accommodation.

(g) “Unrelated accommodations intermediary” means an accommodations intermediary that is not part of a controlled group of corporations, as defined in I.R.C. Section 1563(a), which includes the accommodations provider.

(h) A travel package consists of accommodations bundled with two or more separate components such as air transportation, car rental or similar items and charged to the customer for a single retail price.

2. Collection and Remittance.—

(a) An accommodations intermediary shall be responsible for the collection of tax imposed by [cite to applicable code section(s)] on the room charge and shall be required to separately state on the invoice to the customer the specific amount of taxes collected.

(b) An accommodations intermediary shall remit to the accommodations provider the tax collected on the discount room charge.

(c) An accommodations intermediary shall remit to the [state or local tax agency] the tax collected on the accommodations fee.

(d) An accommodations provider shall collect and remit to the [state or local tax agency] the tax imposed on the discount room charge.

(e) The room charge that is part of a travel package may be determined by the accommodations intermediary by reasonable and verifiable standards from the accommodations intermediary's books and records that are kept in the regular course of business including, but not limited to, non-tax purposes.

Optional:

Example:

Accommodations Provider (Provider) furnishes a one night accommodation to a guest who booked the accommodations through an Accommodations Intermediary (Intermediary). The price at which the Intermediary facilitates the sale of a one-night accommodation to the customer is \$100.00, which includes a \$20.00 accommodations fee. The Provider bills the Intermediary for a discount room charge of \$80.00. The 5% tax applied to the discount room charge is \$4.00 and applied to the accommodation fee is \$1.00. The total price charged to the customer, including tax, is \$105.00, which is the sum of the discount room charge, the accommodations fee and the \$5.00 tax (\$100 room charge + [5% tax rate x \$100.00 room charge] = \$105.00 price to customer).

Intermediary remits \$4.00 tax (5% tax rate x \$80.00 discount room charge) to the Provider and a \$1.00 tax (5% tax rate x \$20.00 accommodations fee) to [the state or local tax agency]. Provider remits the \$4.00 tax to the [state or local tax agency].

\$80.00		Discount room charge
\$20.00		Accommodations fee
	\$100.00	Room charge
\$4.00		Tax on discount room charge remitted by intermediary to provider, and by provider to [state or local government] = (5% x \$80.00)
\$1.00		Tax on accommodations fee remitted by intermediary to [state or local government] = (5% x \$20.00)
	\$5.00	Total tax on room charge
\$105.00		Price to customer including tax charged by Provider and Intermediary

